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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,457	10/25/2001	Jay E. Bauer	113611-002	4061

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/046,457	Applicant(s) BAUER ET AL.	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not identify the citizenship of each inventor.

Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann et al (3630755).

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Schiffmann disclose a method for proofing cut pieces of yeast-containing dough and dough product obtained from such method. The method comprises the steps of forming a dough by mixing a dry mix with water and yeast, forming the dough into shaped pieces and proofing the pieces by passing into a first zone for proofing and then into a second zone for further proofing. The temperature of the dough leaving the first zone is about 100 degree F and the temperature of the dough leaving the second proofing zone is about 120 degree F. The dough is removed from the proofing field before any portion of the dough has reached a temperature at which yeast is killed. The proofing is done in oven in which the ambient temperature is maintained at 100-130 degree F to insure the proper formation of a gas-retaining skin of the proofed dough. During the first proofing, appreciable gassing of the yeast take place and more gas is generated during the second proofing. The method is done by passing the dough pieces on a conveyor belt through the different zones. The dry mix has the composition as set forth on top of column 5. (see columns 2,5 and col. 6 lines 73-75)

Schiffmann et al do not disclose packaging the dough, pick up by the use of suction cups, package at frozen and refrigerated condition, package in presence of oxygen, adding ascorbic acid, the equipment as claimed and storing under freezing condition.

The first and second proofings disclosed by Schiffmann et al are equivalent to the claimed proofing and superproofing. The yeast in the Schiffmann et al process is not killed, thus, it is obvious that live yeasts are still in the dough and that further expansion will take place upon baking. It is obvious gas pockets formed with the dough

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in the Schiffmann et al process because the dough comprises yeast and undergoes proofing. It would have been obvious to one skilled in the art to package the Schiffmann et al dough when the product is intended for commercial distribution. Such packaging is well known in the art. It would also have been obvious to one to store the dough under freezing condition to have long term storage. Such process is well known in the art as exemplified in the prior art to Benjamin et al and Sluimer submitted by applicant.

Freezing or packaging under modified gas packaging are two known methods to extend the shelf life of food product. When the product is stored under freezing condition, modified gas packaging is not necessary and it is obvious the product can be packaged under atmospheric condition which inherently includes the presence of oxygen. It would also have been obvious to one skilled in the art to add ascorbic acid because it is a common dough additive and it also serves to give the product additional vitamin. As to the type of equipment used, it would have been obvious to one skilled in the art to use any type of equipment as long as the required steps can be carried out. Applicant has not shown any unexpected result or criticality in the claimed equipment. Since the Schiffmann et al product also has the skin on the outer surface, it is obvious that it can be picked up by suction cups. It would have been obvious to use any device to carry out the method; the type of equipment used does not affect the step or the outcome of the product. When the product is frozen, it would have been obvious to thaw the product in the refrigerator to prevent any possibility of microbial contamination.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Lin et al disclose a method of heating a proofed dough shape.

Atsumi et al disclose a method of producing bread.


It is noted that the reference having patent no. 5149566 on the IDS filed Feb. 20, 2002 should be patent no. 5149565 to fit with the inventor name given and to have subject matter that is relevant to the claimed subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 19, 2003


Lien T Tran
Examiner
Group 1761